



January 30, 2004

HOUSE BILL No. 1270

DIGEST OF HB 1270 (Updated January 28, 2004 11:50 am - DI 96)

Citations Affected: IC 5-16; IC 32-28; noncode.

Synopsis: Common construction wage and fringe benefit liens. Establishes requirements for the procedure used to determine the wage scale for the construction of a public work. Requires a contractor or subcontractor constructing a public work to file weekly payroll records and specifies the manner of submission. Requires that certain provisions related to the common construction wage be included in public works contracts and subcontracts. Makes the violation of certain requirements relating to payroll records on a public works project a Class A infraction. Disqualifies a contractor or subcontractor who has a prior offense under the common wage law and receives judgment of a subsequent, unrelated offense from being awarded a public works contract for three years. Allows an employee in the construction trades to record a mechanic's lien for unpaid or unsatisfied fringe benefits and withholdings due. Makes conforming changes.

Effective: July 1, 2004.

Liggett

January 15, 2004, read first time and referred to Committee on Labor and Employment.
January 29, 2004, amended, reported — Do Pass.

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HB 1270—LS 6806/DI 102+



January 30, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1270

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-16-7-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) Any firm, individual,
3 partnership, limited liability company, or corporation that is awarded
4 a contract by the state, a political subdivision, or a municipal
5 corporation for the construction of a public work, and any
6 subcontractor of the construction, shall pay for each class of work
7 described in subsection (c)(1) on the project a scale of wages that may
8 not be less than the common construction wage.

9 (b) For the purpose of ascertaining what the common construction
10 wage is in the county, the awarding governmental agency, before
11 advertising for the contract, shall set up a committee of five (5) persons
12 as follows:

13 (1) One (1) person representing labor, to be named by the
14 president of the state federation of labor.

15 (2) One (1) person representing industry, to be named by the
16 awarding agency.

17 (3) A third member to be named by the governor.

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(4) One (1) taxpayer who pays the tax that will be the funding source for the project and resides in the county where the project is located. The owner of the project shall make the appointment under this subdivision.

(5) One (1) taxpayer who pays the tax that will be the funding source for the project and resides in the county where the project is located. The legislative body (as defined in IC 36-1-2-9) for the county where the project is located shall make the appointment under this subdivision.

(c) As soon as appointed, the committee shall meet in the county where the project is located and, **using a procedure that meets the requirements set forth in section 1.5 of this chapter,** shall determine in writing the following:

(1) A classification of the labor to be employed in the performance of the contract for the project, divided into the following three (3) classes:

- (A) Skilled labor.
- (B) Semiskilled labor.
- (C) Unskilled labor.

(2) The wage per hour to be paid each of the classes.

In making its determination, the committee is ~~not~~ required to consider **only the** information ~~not~~ presented to the committee at ~~the~~ a meeting **that is conducted in accordance with section 1.5 of this chapter.** IC 5-14-1.5 (open door law) applies to a meeting of the committee.

(d) The rate of wages determined under subsection (c) shall not be less than the common construction wage for each of the three (3) classes of wages described in subsection (c) that are currently being paid in the county where the project is located.

(e) The provisions of this chapter shall not apply to contracts let by the Indiana department of transportation for the construction of highways, streets, and bridges. IC 8-23-9 applies to state highway projects.

(f) A determination under subsection (c) shall be made and filed with the awarding agency at least two (2) weeks prior to the date fixed for the letting, and a copy of the determination shall be furnished upon request to any person desiring to bid on the contract. The schedule is open to the inspection of the public.

(g) If the committee appointed under subsection (b) fails to act and to file a determination under subsection (c) at or before the time required under subsection (f), the awarding agency shall make the determination and its finding shall be final.

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(h) It shall be a condition of a contract awarded under this chapter that the successful bidder and all subcontractors shall comply strictly with the determination made under this section.

(i) The provisions of this chapter do not apply to public projects in this state that would otherwise be subject to the provisions of this chapter that are to be paid for in whole or in part with funds granted by the federal government, unless the department of the federal government making the grant shall consent in writing that the provisions of this chapter are applicable to the project.

(j) Notwithstanding any other law, the provisions of this chapter apply to projects that will be:

- (1) owned entirely; or
- (2) leased with an option to purchase;

by the state or a political subdivision (as defined in IC 36-1-2-13).

(k) Notwithstanding any other law, this chapter does not apply to projects in which the actual construction costs less than one hundred fifty thousand dollars (\$150,000).

SECTION 2. IC 5-16-7-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1.5. In making the determination required under section 1(c) of this chapter, the committee shall use a procedure that meets the following requirements:

(1) The committee shall consider the following as evidence of the common construction wage currently being paid in the county where the project is located:

- (A) Data presented by the department of workforce development.**
- (B) Collective bargaining agreements, if applicable.**
- (C) Other information submitted by interested parties.**

Only evidence relating to the wages and benefits currently being paid by construction industry employers may be considered by the committee under this subdivision.

(2) All testimony presented to the committee must be made under oath or affirmation.

(3) Any part of the evidence may be submitted in written form if doing so will expedite the meeting.

(4) Documentary evidence may be received in the form of a copy or an excerpt.

(5) To the extent necessary for full disclosure of all relevant facts and issues, the committee shall afford all interested parties the opportunity to present evidence and arguments and to respond to evidence presented by other interested

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parties.

(6) The committee's written determination must list the evidence or sources that the committee relied upon in making its determination.

SECTION 3. IC 5-16-7-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2.5. (a) For each week in which a contractor or subcontractor performs work on a contract for which a schedule of wages was filed under section 2 of this chapter, the contractor or subcontractor shall submit a copy of all payrolls for the work performed on the contract for that week to the state or municipal corporation that let the contract.

(b) The payrolls submitted under subsection (a) must set out accurately and completely at least the following information for each worker:

- (1) Name.
- (2) Address.
- (3) Labor classification.
- (4) Wage rate paid.
- (5) The daily and weekly number of hours worked.
- (6) Deductions made from wages paid.
- (7) Actual wages paid.

(c) A contractor or subcontractor may submit the payroll information required under subsection (b) by paper or electronic medium.

(d) A contractor is responsible for the submission of the payroll information by all subcontractors performing work for the contractor.

(e) A contractor or subcontractor shall maintain the payrolls required by this section:

- (1) during the course of the work; and
- (2) for three (3) years after the last date work is performed; on the contract.

(f) A contractor or subcontractor shall:

- (1) make the payrolls required by this section available for inspection, copying, or transcription; and
- (2) permit interviews of employees during working hours on the job site;

by the authorized representatives of the state or municipal corporation that let the contract and the state department of labor.

SECTION 4. IC 5-16-7-2.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2004]: Sec. 2.7. (a) A subcontract for the performance of any work on a contract for which a schedule of wages was filed under section 2 of this chapter must include as terms of the subcontract:

- (1) the schedule of wages filed under section 2 of this chapter;
- (2) the certification required by subsection (b);
- (3) the requirements of this chapter; and
- (4) a requirement that the subcontractor include the terms required in a subcontract under this section as terms in any lower tier subcontract.

(b) A contractor that enters into a contract for which a schedule of wages is filed under section 2 of this chapter shall certify that neither the contractor nor any person with an ownership interest in the contractor is disqualified from being awarded the contract because of prior violations of the requirements of this chapter.

(c) A contractor is responsible for the compliance with this section by a subcontractor or lower tier subcontractor that is performing work for the contractor.

SECTION 5. IC 5-16-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) A contractor or subcontractor who knowingly fails shall not fail to pay the rate of wages determined under this chapter. commits a Class B misdemeanor.

(b) A contractor or subcontractor shall not:

- (1) submit a payroll required by section 2.5 of this chapter; or
- (2) make a certification under section 2.7(b) of this chapter; that contains information that is false or incomplete.

(c) A contractor or subcontractor shall not fail to submit a payroll required by section 2.5 of this chapter.

(d) A contractor or subcontractor shall not fail to:

- (1) make a payroll available for inspection, copying, or transcription; or
- (2) permit an interview of an employee; as required by section 2.5(f) of this chapter.

(e) A person that violates subsections (a) through (d) commits a Class A infraction.

(f) If the contractor or subcontractor has committed a prior unrelated offense violation under this section, the contract on which the instant offense occurred shall be forfeited and the contractor or subcontractor may not receive any further payment on the contract nor may the state or the municipal corporation making the contract make any further payments on the contract from any of the funds under its charge or control.

(g) In addition to the penalty under subsection (f), a contractor

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1 or subcontractor that has a prior unrelated judgment under this
 2 section before a subsequent violation that results in a judgment
 3 under this section is disqualified for three (3) years after the date
 4 of the subsequent violation from being awarded a contract by the
 5 state or a municipal corporation for construction of a public work.

6 SECTION 6. IC 5-16-7-4 IS AMENDED TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2004]: Sec. 4. The definitions in this section
 8 apply throughout this chapter:

9 (1) "Common construction wage" means a scale of wages for each
 10 class of work described in section 1(c)(1) of this chapter that is
 11 not less than the common construction wage of all construction
 12 wages being paid in the county where a project is located, as
 13 determined by the committee described in section 1(b) of this
 14 chapter, after having considered:

15 (A) reports from the department of workforce development;
 16 and

17 (B) any other information submitted by any person to the
 18 committee established under section 1(b) of this chapter.

19 **using a procedure that meets the requirements set forth in**
 20 **section 1.5 of this chapter.**

21 (2) "State of Indiana" includes any officer, board, commission, or
 22 other agency authorized by law to award contracts for the
 23 performance of public work on behalf of the state, excepting as
 24 otherwise provided in this chapter.

25 (3) "Municipal corporation" includes any county, city, town, or
 26 school corporation, as well as any officer, board, commission, or
 27 other agency authorized by law to award contracts for the
 28 performance of public work on behalf of any such municipal
 29 corporation. The term also includes a redevelopment commission
 30 established under IC 36-7-14-3.

31 (4) "Public work" includes any public building, highway, street,
 32 alley, bridge, sewer, drain, improvement, or any other work of any
 33 nature or character whatsoever which is paid for out of public
 34 funds, excepting as otherwise provided in this chapter.

35 SECTION 7. IC 32-28-3-0.5 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 37 1, 2004]: Sec. 0.5. As used in this chapter, "fringe benefits and
 38 withholdings" means compensation due an employee employed in
 39 the construction trades under a written contract for benefits in
 40 addition to wages, including:

41 (1) holiday pay;

42 (2) time off for:

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- (A) sickness or injury; or
- (B) personal reasons or vacation;
- (3) bonus pay;
- (4) authorized expenses incurred during the course of employment; and
- (5) contributions due to or on behalf of an employee.

SECTION 8. IC 32-28-3-1, AS AMENDED BY P.L.151-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) A contractor, a subcontractor, a mechanic, a lessor leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor, a journeyman, a laborer, or any other person performing labor or furnishing materials or machinery, including the leasing of equipment or tools, for:

- (1) the erection, alteration, repair, or removal of:
 - (A) a house, mill, manufactory, or other building; or
 - (B) a bridge, reservoir, system of waterworks, or other structure;
- (2) the construction, alteration, repair, or removal of a walk or sidewalk located on the land or bordering the land, a stile, a well, a drain, a drainage ditch, a sewer, or a cistern; or
- (3) any other earth moving operation;

may have a lien as set forth in this section.

(b) A person described in subsection (a) may have a lien separately or jointly upon the:

- (1) house, mill, manufactory, or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:
 - (A) that the person erected, altered, repaired, moved, or removed; or
 - (B) for which the person furnished materials or machinery of any description; and
- (2) on the interest of the owner of the lot or parcel of land:
 - (A) on which the structure or improvement stands; or
 - (B) with which the structure or improvement is connected;

to the extent of the value of any labor done, **including fringe benefits and withholdings**, or the material furnished, or both, including any use of the leased equipment and tools.

(c) All claims for wages, **fringe benefits and withholdings, or both wages and fringe benefits and withholdings** of mechanics and laborers employed in or about a shop, mill, wareroom, storeroom, manufactory or structure, bridge, reservoir, system of waterworks or other structure, sidewalk, walk, stile, well, drain, drainage ditch,

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cistern, or any other earth moving operation shall be a lien on all the:

- (1) machinery;
- (2) tools;
- (3) stock;
- (4) material; or
- (5) finished or unfinished work;

located in or about the shop, mill, wareroom, storeroom, manufactory or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth used in a business.

(d) If the person, firm, limited liability company, or corporation described in subsection (a) is in failing circumstances, the claims described in this section shall be preferred debts whether a claim or notice of lien has been filed.

(e) Subject to subsection (f), a contract:

- (1) for the construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);
- (2) for the construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5);

(3) for the construction, alteration, or repair of property that is:

(A) owned, operated, managed, or controlled by a:

- (i) public utility (as defined in IC 8-1-2-1);
- (ii) municipally owned utility (as defined in IC 8-1-2-1);
- (iii) joint agency (as defined in IC 8-1-2.2-2);
- (iv) rural electric membership corporation formed under IC 8-1-13-4;
- (v) rural telephone cooperative corporation formed under IC 8-1-17; or
- (vi) not-for-profit utility (as defined in IC 8-1-2-125);

regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public; or

(4) to prepare property for Class 2 residential construction;

may include a provision or stipulation in the contract of the owner and principal contractor that a lien may not attach to the real estate, building, structure or any other improvement of the owner.

(f) A contract containing a provision or stipulation described in subsection (e) must meet the requirements of this subsection to be valid against subcontractors, mechanics, journeymen, laborers, or persons performing labor upon or furnishing materials or machinery for the

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property or improvement of the owner. The contract must:

- (1) be in writing;
- (2) contain specific reference by legal description of the real estate to be improved;
- (3) be acknowledged as provided in the case of deeds; and
- (4) be filed and recorded in the recorder's office of the county in which the real estate, building, structure, or other improvement is situated not more than five (5) days after the date of execution of the contract.

A contract containing a provision or stipulation described in subsection (e) does not affect a lien for labor, material, or machinery supplied before the filing of the contract with the recorder.

(g) Upon the filing of a contract under subsection (f), the recorder shall:

- (1) record the contract at length in the order of the time it was received in books provided by the recorder for that purpose;
- (2) index the contract in the name of the:
 - (A) contractor; and
 - (B) owner;
- in books kept for that purpose; and
- (3) collect a fee for recording the contract as is provided for the recording of deeds and mortgages.

(h) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit any material, labor, or machinery for the alteration or repair of an owner occupied single or double family dwelling or the appurtenances or additions to the dwelling to:

- (1) a contractor, subcontractor, mechanic; or
- (2) anyone other than the occupying owner or the owner's legal representative;

must furnish to the occupying owner of the parcel of land where the material, labor, or machinery is delivered a written notice of the delivery or work and of the existence of lien rights not later than thirty (30) days after the date of first delivery or labor performed. The furnishing of the notice is a condition precedent to the right of acquiring a lien upon the lot or parcel of land or the improvement on the lot or parcel of land.

(i) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit material, labor, or machinery for the original construction of a single or double family dwelling for the intended occupancy of the owner upon whose real estate the construction takes place to a contractor, subcontractor,

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mechanic, or anyone other than the owner or the owner's legal representatives must:

(1) furnish the owner of the real estate:

(A) as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor; or

(B) if IC 6-1.1-5-9 applies, as named in the transfer books of the township assessor;

with a written notice of the delivery or labor and the existence of lien rights not later than sixty (60) days after the date of the first delivery or labor performed; and

(2) file a copy of the written notice in the recorder's office of the county not later than sixty (60) days after the date of the first delivery or labor performed.

The furnishing and filing of the notice is a condition precedent to the right of acquiring a lien upon the real estate or upon the improvement constructed on the real estate.

(j) A lien for material or labor in original construction does not attach to real estate purchased by an innocent purchaser for value without notice of a single or double family dwelling for occupancy by the purchaser unless notice of intention to hold the lien is recorded under section 3 of this chapter before recording the deed by which the purchaser takes title.

SECTION 9. IC 32-28-3-3, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) Except as provided in subsection (b), a person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn statement and notice of the person's intention to hold a lien upon the property for the amount of the claim:

(1) in the recorder's office of the county; and

(2) not later than ninety (90) days after performing labor or furnishing materials or machinery described in section 1 of this chapter.

The statement and notice of intention to hold a lien may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

(b) This subsection applies to a person that performs labor or furnishes materials or machinery described in section 1 of this chapter related to a Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5). A person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn

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statement and notice of the person's intention to hold a lien upon the property for the amount of the claim:

- (1) in the recorder's office of the county; and
- (2) not later than sixty (60) days after performing labor or furnishing materials or machinery described in section 1 of this chapter.

The statement and notice of intention to hold a lien may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

(c) A statement and notice of intention to hold a lien filed under this section must specifically set forth:

- (1) the amount claimed, **including any fringe benefits and withholdings;**
- (2) the name and address of the claimant;
- (3) the owner's:
 - (A) name; and
 - (B) latest address as shown on the property tax records of the county; and
- (4) the:
 - (A) legal description; and
 - (B) street and number, if any;
 of the lot or land on which the house, mill, manufactory or other buildings, bridge, reservoir, system of waterworks, or other structure may stand or be connected with or to which it may be removed.

The name of the owner and legal description of the lot or land will be sufficient if they are substantially as set forth in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor or, if IC 6-1.1-5-9 applies, the transfer books of the township assessor at the time of filing of the notice of intention to hold a lien.

(d) The recorder shall:

- (1) mail, first class, one (1) of the duplicates of the statement and notice of intention to hold a lien to the owner named in the statement and notice not later than three (3) business days after recordation;
- (2) post records as to the date of the mailing; and
- (3) collect a fee of two dollars (\$2) from the lien claimant for each statement and notice that is mailed.

The statement and notice shall be addressed to the latest address of the owner as specifically set out in the sworn statement and notice of the person intending to hold a lien upon the property.

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SECTION 10. IC 32-28-3-9, AS ADDED BY P.L.2-2002,
SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2004]: Sec. 9. (a) This section applies to a:

- (1) subcontractor;
- (2) lessor leasing construction and other equipment and tools,
regardless of whether an operator is also provided by the lessor;
- (3) journeyman; or
- (4) laborer;

employed or leasing any equipment or tools used by the lessee in
erecting, altering, repairing, or removing any house, mill, manufactory
or other building, or bridge, reservoir, system of waterworks, or other
structure or earth moving, or in furnishing any material or machinery
for these activities.

(b) Except as provided in section 12 of this chapter, in order to
acquire and hold a lien, a person described in subsection (a) must give
to the property owner, or if the property owner is absent, to the property
owner's agent, written notice particularly setting forth the amount of the
person's claim, **including any fringe benefits and withholdings**, and
services rendered for which:

- (1) the person's employer or lessee is indebted to the person; and
- (2) the person holds the property owner responsible.

(c) Subject to subsections (d) and (e), the property owner is liable
for the person's claim.

(d) The property owner is liable to a person described in subsection
(a) for not more than the amount that is due and may later become due
from the owner to the employer or lessee.

(e) A person described in subsection (a) may recover the amount of
the person's claim if, after the amounts of other claims that have
priority are subtracted from the amount due from the property owner
to the employer or lessee, the remainder of the amount due from the
property owner to the employer or lessee is sufficient to pay the amount
of the person's claim.

(f) This section applies to a person described in subsection (a) who
gives written notice, to the property owner or, if the property owner is
absent, to the owner's agent, before labor is performed or materials or
machinery is furnished. The notice must particularly set forth the
amount of:

- (1) labor the person has contracted to perform; or
- (2) materials or machinery the person has contracted to furnish;
for the employer or lessee in erecting, altering, repairing, or removing
any of the buildings or other structures described in subsection (a). A
person described in subsection (a) has the same rights and remedies

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1 against the property owner for the amount of the labor performed by the
 2 person or materials or machinery furnished by the person after the
 3 notice is given, as are provided in this chapter for persons who serve
 4 notice after performing the labor or furnishing the materials or
 5 machinery.

6 (g) If an action is brought against a property owner under this
 7 section, all subcontractors, equipment lessors leasing equipment,
 8 journeymen, and laborers who have:

- 9 (1) performed labor or furnished materials or machinery; and
- 10 (2) given notice under this section;

11 may become parties to the action. If, upon final judgment against the
 12 property owner the amount recovered and collected is not sufficient to
 13 pay the claimants in full, the amount recovered and collected shall be
 14 divided among the claimants pro rata.

15 SECTION 11. IC 32-28-3-12, AS ADDED BY P.L.2-2002,
 16 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2004]: Sec. 12. (a) This section applies to a person who:

- 18 (1) performs work or labor such as:

- 19 (A) grading;
- 20 (B) building embankments;
- 21 (C) making excavations for track;
- 22 (D) building:
- 23 (i) bridges;
- 24 (ii) trestlework;
- 25 (iii) works of masonry;
- 26 (iv) fencing; or
- 27 (v) other structures; or

- 28 (E) performs work of any kind;
- 29 in the construction or repair of a railroad or part of a railroad in
- 30 Indiana; or

- 31 (2) furnishes material for:

- 32 (A) a bridge, trestlework, work of masonry, fence, or other
- 33 structure; or
- 34 (B) use in the construction or repair of a railroad or part of a
- 35 railroad;

36 in Indiana.

37 (b) The work, labor, or material described in subsection (a) may be
 38 provided under a contract:

- 39 (1) with the railroad corporation building, repairing, or owning
- 40 the railroad; or
- 41 (2) with a person, corporation, or company engaged as:
- 42 (A) lessee;

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1 (B) contractor;
 2 (C) subcontractor; or
 3 (D) agent;
 4 of the railroad corporation in the work of constructing or repairing
 5 the railroad or part of the railroad in Indiana.
 6 (c) A person to whom this section applies may have a lien to the
 7 extent of the work or labor performed, ~~or the value of any fringe~~
 8 **benefits and withholdings due**, material furnished, or ~~both~~ **a**
 9 **combination of some or all of the amounts described in this**
 10 **subsection**, upon:
 11 (1) the right-of-way and franchises of the railroad corporation;
 12 and
 13 (2) the works and structures as set forth in this section that may be
 14 upon the right-of-way and franchise of the railroad corporation;
 15 within the limits of the county in which the work or labor may be
 16 performed or the material may be furnished.
 17 (d) A person performing work or labor or furnishing materials under
 18 a contract described in subsection (b)(2) is not required to give notice
 19 to the railroad corporation under section 9 of this chapter in order to
 20 acquire and hold a lien for labor performed, **including any fringe**
 21 **benefits and withholdings due**, or material furnished under the
 22 provisions of this section. The performance of the labor or the
 23 furnishing of the materials is sufficient notice to the railroad
 24 corporation. A lien that is acquired as set forth in this subsection shall
 25 be enforced as other mechanic's liens are enforced in Indiana.
 26 (e) A person who, in doing business with a railroad company, has
 27 constructed a building or other improvement on a portion of the
 28 railroad right-of-way adjacent to the person's place of business may
 29 have a lien to the extent of the fair market value of the improvement on
 30 that portion of the right-of-way. The lien may be acquired and
 31 enforced:
 32 (1) upon abandonment of the right-of-way by the railroad
 33 company; and
 34 (2) against the successors in title of the railroad company.
 35 This subsection does not apply to property that is subject to a written
 36 agreement providing for the disposition of improvements upon
 37 abandonment. Liens acquired under this subsection shall be enforced
 38 as other mechanic's liens are enforced in Indiana.
 39 SECTION 12. IC 32-28-3-14, AS ADDED BY P.L.2-2002,
 40 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2004]: Sec. 14. (a) Except as provided in subsection (b), in an
 42 action to enforce a lien under this chapter, the plaintiff or lienholder

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1 may recover reasonable attorney's fees as a part of the judgment.

2 (b) A plaintiff may not recover attorney's fees as part of the
3 judgment against a property owner in an action in which the contract
4 consideration for the labor, **including any fringe benefits and**
5 **withholdings**, material, or machinery has been paid by the property
6 owner or party for whom the improvement has been constructed.

7 SECTION 13. IC 32-28-3-15, AS ADDED BY P.L.2-2002,
8 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2004]: Sec. 15. A person who knowingly or intentionally:

10 (1) performs labor, supplies services, or furnishes material or
11 machinery in the:

12 (A) construction;

13 (B) repair; or

14 (C) remodeling;

15 of a building, structure, or other work;

16 (2) accepts payment for the labor, services, material, or machinery
17 furnished and supplied;

18 (3) at the time of receiving the payment, knows that the person is
19 indebted to another for:

20 (A) labor, including **fringe benefits and withholdings**, and
21 the cost of renting or leasing construction and other equipment
22 and tools, whether or not an operator is also provided by the
23 lessor;

24 (B) services;

25 (C) material; or

26 (D) machinery;

27 used or employed in the construction, repair, or remodeling;

28 (4) fails:

29 (A) at the time of receiving the payment; and

30 (B) with intent to defraud;

31 to notify in writing the person from whom the payment was
32 received of the existence of the outstanding indebtedness; and

33 (5) causes the person from whom the payment was received to
34 suffer a loss by failing under subdivision (4) to notify the person
35 of the existence of the outstanding indebtedness;

36 commits a Class D felony.

37 SECTION 14. IC 32-28-3-16, AS ADDED BY P.L.101-2002,
38 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2004]: Sec. 16. (a) This section applies to a construction
40 contract for the construction, alteration, or repair of a building or
41 structure other than:

42 (1) a Class 2 structure (as defined in IC 22-12-1-5) or an

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improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); or

(2) property that is:

(A) owned, operated, managed, or controlled by a public utility (as defined in IC 8-1-2-1), a municipally owned utility (as defined in IC 8-1-2-1), a joint agency (as defined in IC 8-1-2.2-2), a rural electric membership corporation formed under IC 8-1-13-4, rural telephone cooperative corporation formed under IC 8-1-17, or a not-for-profit utility (as defined in IC 8-1-2-125) regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.

(b) A provision in a contract for the improvement of real estate in Indiana is void if the provision requires a person described in section 1 of this chapter who furnishes labor, **including any fringe benefits and withholdings due**, materials, or machinery to waive a right to:

(1) a lien against real estate; or

(2) a claim against a payment bond;

before the person is paid for the labor or materials furnished.

(c) A provision in a contract for the improvement of real estate in Indiana under which one (1) or more persons agree not to file a notice of intention to hold a lien is void.

SECTION 15. [EFFECTIVE JULY 1, 2004] **IC 5-16-7, as amended by this act, applies to contracts for the construction of a public work awarded after June 30, 2004.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1270, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

- Page 2, line 21, reset in roman "is".
- Page 2, line 21, reset in roman "required to".
- Page 2, line 21, delete "shall".
- Page 2, line 22, after "only" insert "**the**".
- Page 4, delete lines 5 through 26.
- Page 4, delete line 40.
- Page 4, line 41, delete "(4)" and insert "**(3)**".
- Page 4, line 42, delete "(5)" and insert "**(4)**".
- Page 5, line 1, delete "(6)" and insert "**(5)**".
- Page 5, line 2, delete "(7)" and insert "**(6)**".
- Page 5, line 3, delete "(8)" and insert "**(7)**".
- Page 5, delete lines 4 through 13.
- Page 5, line 14, delete "(d)" and insert "**(c)**".
- Page 5, line 15, delete "in any form the" and insert "**by paper or electronic medium.**".
- Page 5, delete line 16.
- Page 5, line 17, delete "(e)" and insert "**(d)**".
- Page 5, line 20, delete "(f)" and insert "**(e)**".
- Page 5, line 25, delete "(g)" and insert "**(f)**".
- Page 6, line 2, delete "that:" and insert "**that**".
- Page 6, line 3, delete "(1)".
- Page 6, run in lines 2 through 3.
- Page 6, line 6, delete "chapter; and" and insert "**chapter.**".
- Page 6, delete lines 7 through 9.
- Page 6, line 15, strike "who knowingly fails" and insert "**shall not fail**".
- Page 6, line 16, after "chapter" insert ".".
- Page 6, line 16, strike "commits a Class B misdemeanor."
- Page 6, line 17, delete "who knowingly or" and insert "**shall not:**".
- Page 6, delete line 18.
- Page 6, line 19, delete "submits" and insert "**submit**".
- Page 6, line 21, delete "makes" and insert "**make**".
- Page 6, line 22, delete "incomplete commits a" and insert "**incomplete.**".
- Page 6, delete line 23.
- Page 6, line 24, delete "who fails" and insert "**shall not fail**".

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Page 6, line 25, delete "chapter commits a Class B" and insert **"chapter."**.

Page 6, delete line 26.

Page 6, line 27, delete "who fails to:" and insert **"shall not fail to:"**.

Page 6, line 31, delete "2.5(g)" and insert **"2.5(f)"**.

Page 6, line 31, delete "chapter commits a Class A" and insert **"chapter."**.

Page 6, delete line 32.

Page 6, between lines 32 and 33, begin a new paragraph and insert:

"(e) A person that violates subsections (a) through (d) commits a Class A infraction."

Page 6, line 33, delete "(e)" and insert **"(f)"**.

Page 6, line 34, strike "offense" and insert **"violation"**.

Page 6, line 40, delete "(f)" and insert **"(g)"**.

Page 6, line 40, delete "(e)," and insert **"(f),"**.

Page 6, line 41, delete "who" and insert **"that"**.

Page 6, line 41, delete "conviction" and insert **"judgment"**.

Page 6, line 42, delete "and is convicted of" and insert **"before"**.

Page 6, line 42, delete "offense" and insert **"violation that results in a judgment"**.

Page 7, line 2, delete "offense" and insert **"violation"**.

Page 7, delete lines 33 through 42.

Page 8, delete lines 1 through 35.

Page 18, delete lines 26 through 34.

Page 18, line 36, delete "and IC 5-16-7.5, as added by this act, apply" and insert **"applies"**.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1270 as introduced.)

LIGGETT, Chair

Committee Vote: yeas 6, nays 4.

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